



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

TEXAS ORTHOPEDIC HOSPITAL  
3701 KIRBY DR STE 1288  
HOUSTON TX 77098-3916

#### **Respondent Name**

ZURICH AMERICAN INSURANCE COMPANY

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-10-1503-01

#### **MFDR Date Received**

November 4, 2009

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "In closing, it is the position of the Provider that all charges relating to the admission of this claimant are due and payable and not subject to the improper reductions taken by the carrier in this case. The carrier's position is incorrect and in violation of the Hospital Facility Fee Guideline for outpatient services."

Amount in Dispute: \$ 15,624.01

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "This case involves DOS 11/06/08 through 11/07/08. According to the Requestor MAR for the services was \$18,554.57 and carrier paid \$2,930.56 leaving \$15,624.01 in dispute. Carrier reduced the reimbursement in accordant with network contract requirements between the parties."

**Response Submitted by:** FLAHIVE OGDEN & LATSON

### **SUMMARY OF FINDINGS**

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
November 6, 2008 to November 7, 2008	Outpatient Hospital Services	\$15,624.01	\$7,410.45

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.403, titled *Hospital Facility Fee Guideline – Outpatient*, sets out the reimbursement guidelines for facility services provided in an outpatient acute care hospital.
3. 28 Texas Administrative Code §134.203, titled *Medical Fee Guideline for Professional Services*, sets out the

reimbursement guidelines for professional medical services.

4. 28 Texas Administrative Code §133.4 requires written notification to health care providers regarding contractual agreements for informal and voluntary networks.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated March 16, 2009

- C ANY NETWORK REDUCTION IS IN ACCORDANCE WITH THE NETWORK REFERENCED ABOVE
- FOCUS/FIRST HEALTH

Explanation of benefits dated May 12, 2009

- C – ANY NETWORK REDUCTION IS IN ACCORDANCE WITH THE NETWORK REFERENCED ABOVE.

### **Issues**

1. Are the disputed services subject to a contractual agreement between the parties to this dispute?
2. What is the applicable rule for determining reimbursement for the disputed services?
3. What is the recommended payment amount for the services in dispute?
4. Is the requestor entitled to reimbursement?

### **Findings**

1. The insurance carrier reduced or denied disputed services with reason code C ANY NETWORK REDUCTION IS IN ACCORDANCE WITH THE NETWORK REFERENCED ABOVE.” Review of the submitted information found insufficient documentation to support that the disputed services were subject to a contractual fee arrangement between the parties to this dispute. Nevertheless, on October 6, 2010, the Division requested the respondent to provide a copy of the referenced contract as well as documentation to support notification to the healthcare provider, as required by 28 Texas Administrative Code §133.4, that the insurance carrier had been given access to the contracted fee arrangement. Review of the submitted information finds that the documentation does not support notification to the healthcare provider in the time and manner required, nor does the documentation support that the respondent had been granted access to the health care provider’s contracted fee arrangement during the time of the disputed services. The notice does not include the name, physical address, and telephone number of any person given access to the network’s fee arrangement with the health care provider as required by §133.4(d)(2)(A). The notice does not include the start date and any end date during which the respondent had been given access to the contracted fee arrangement as required by §133.4(d)(2)(B). The notification letter is not dated. No explanation or documentation was found to support the contents of the submitted postmarked envelope, nor is the envelope addressed to the health care provider. No documentation was found to support receipt of the notification by the health care provider. Neither the signature date, the postmark date, nor the receipt date can be established from the submitted documentation to support delivery to the health care provider in accordance with the requirements of §133.4(e) and 28 Texas Administrative Code §§102(p) and (h). Thorough review of the submitted documentation finds no convincing evidence of timely notification in accordance with §133.4(f). The Division concludes that, pursuant to §133.4(g), the insurance carrier is not entitled to pay the health care provider at a contracted fee. Consequently, per §133.4(h), the disputed services will be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. This dispute relates to facility services performed in an outpatient hospital setting with reimbursement subject to the provisions of 28 Texas Administrative Code §134.403, which requires that the reimbursement calculation used for establishing the maximum allowable reimbursement (MAR) shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the Federal Register with the application of minimal modifications as set forth in the rule. Per §134.403(f)(1), the sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 200 percent, unless a facility or surgical implant provider requests separate reimbursement of implantables in accordance with subsection (g). Review of the submitted documentation finds no request for separate reimbursement of implantables. Nor did the requestor certify that the amount billed represents the actual costs for the implantables in accordance with §134.403(g)(1). Reimbursement will therefore be calculated at 200 percent of the Medicare facility specific reimbursement amount, including any outlier payments, as specified in §134.403(f)(1)(A).
3. Under the Medicare Outpatient Prospective Payment System (OPPS), each billed service is assigned an Ambulatory Payment Classification (APC) based on the procedure code used, the supporting documentation and the other services that appear on the bill. A payment rate is established for each APC. Depending on the services provided, hospitals may be paid for more than one APC per encounter. Payment for ancillary and supportive items and services, including services that are billed without procedure codes, is packaged into

payment for the primary service. A full list of APCs is published quarterly in the OPPS final rules which are publicly available through the Centers for Medicare and Medicaid Services (CMS) website. Reimbursement for the disputed services is calculated as follows:

- Procedure code J7050, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
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- Procedure code J1885, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
- Procedure code J2550, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
- Procedure code J7120, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
- Procedure code 87205, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$5.96. This amount multiplied by 8 units is \$47.68. 125% of this amount is \$59.60. The recommended payment is \$59.60.
- Procedure code 87102, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$11.74. This amount multiplied by 4 units is \$46.96. 125% of this amount is \$58.70. The recommended payment is \$58.70.
- Procedure code 87075, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$13.22. This amount multiplied by 4 units is \$52.88. 125% of this amount is \$66.10. The recommended payment is \$66.10.
- Procedure code 87118, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$15.29. This amount multiplied by 4 units is \$61.16. 125% of this amount is \$76.45. The recommended payment is \$76.45.
- Procedure code 87070, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$12.03. This amount multiplied by 4 units is \$48.12. 125% of this amount

is \$60.15. The recommended payment is \$60.15.

- Procedure code 87206, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Facility payment for the technical component of this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(e)(1). The fee listed for this code in the Medicare Clinical Fee Schedule is \$7.50. This amount multiplied by 4 units is \$30.00. 125% of this amount is \$37.50. The recommended payment is \$37.50.
- Procedure code 76000 has a status indicator of Q, which denotes packaged services that may be separately payable only if OPPS criteria are met. Payment for this service is packaged into the payment for any other procedures with status indicators S, T, V, or X that are billed on the same date of service. Review of the submitted information finds that OPPS criteria for separate payment have not been met. Payment for this service is included in the payment for other status indicator T and X procedures billed on the same date of service. The use of a modifier is not appropriate. Separate reimbursement is not recommended.
- Procedure code 27640, date of service November 7, 2008, has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 100%. These services are classified under APC 0051, which, per OPPS Addendum A, has a payment rate of \$2,737.89. This amount multiplied by 60% yields an unadjusted labor-related amount of \$1,642.73. This amount multiplied by the annual wage index for this facility of 0.989 yields an adjusted labor-related amount of \$1,624.66. The non-labor related portion is 40% of the APC rate or \$1,095.16. The sum of the labor and non-labor related amounts is \$2,719.82. Per 42 Code of Federal Regulations §419.43(d) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, if the total cost for a service exceeds 1.75 times the OPPS payment and also exceeds the annual fixed-dollar threshold of \$1,575, the outlier payment is 50% of the amount by which the cost exceeds 1.75 times the OPPS payment. Per the OPPS Facility-Specific Impacts file, CMS lists the cost-to-charge ratio for this provider as 0.1731. This ratio multiplied by the billed charge of \$1,877.30 yields a cost of \$324.96. The total cost of all packaged items is allocated proportionately across all separately paid OPPS services based on the percentage of the total APC payment. The APC payment for these services of \$2,719.82 divided by the sum of all APC payments is 54.11%. The sum of all packaged costs is \$2,683.17. The allocated portion of packaged costs is \$1,451.84. This amount added to the service cost yields a total cost of \$1,776.80. The cost of these services exceeds the annual fixed-dollar threshold of \$1,575. The amount by which the cost exceeds 1.75 times the OPPS payment is \$0.00. The total APC payment for this line is \$2,719.82. This amount multiplied by 200% yields a MAR of \$5,439.64.
- Procedure code 27641, date of service November 7, 2008, has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 50%. These services are classified under APC 0050, which, per OPPS Addendum A, has a payment rate of \$1,859.23. This amount multiplied by 60% yields an unadjusted labor-related amount of \$1,115.54. This amount multiplied by the annual wage index for this facility of 0.989 yields an adjusted labor-related amount of \$1,103.27. The non-labor related portion is 40% of the APC rate or \$743.69. The sum of the labor and non-labor related amounts is \$1,846.96. The cost of these services does not exceed the annual fixed-dollar threshold of \$1,575. The outlier payment amount is \$0. The total APC payment for this line, including multiple-procedure discount, is \$923.48. This amount multiplied by 200% yields a MAR of \$1,846.96.
- Procedure code 28120, date of service November 7, 2008, has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 50%. These services are classified under APC 0055, which, per OPPS Addendum A, has a payment rate of \$1,326.64. This amount multiplied by 60% yields an unadjusted labor-related amount of \$795.98. This amount multiplied by the annual wage index for this facility of 0.989 yields an adjusted labor-related amount of \$787.22. The non-labor related portion is 40% of the APC rate or \$530.66. The sum of the labor and non-labor related amounts is \$1,317.88. The cost of these services does not exceed the annual fixed-dollar threshold of \$1,575. The outlier payment amount is \$0. The total APC payment for this line, including multiple-procedure discount, is \$658.94. This amount multiplied by 200% yields a MAR of \$1,317.88.
- Procedure code 14300, date of service November 7, 2008, has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 50%. These services are classified under APC 0137, which, per OPPS Addendum A, has a payment rate of \$1,287.06. This amount multiplied by 60% yields an unadjusted labor-related amount of \$772.24. This amount multiplied by the annual wage

index for this facility of 0.989 yields an adjusted labor-related amount of \$763.75. The non-labor related portion is 40% of the APC rate or \$514.82. The sum of the labor and non-labor related amounts is \$1,278.57. The cost of these services does not exceed the annual fixed-dollar threshold of \$1,575. The outlier payment amount is \$0. The total APC payment for this line, including multiple-procedure discount, is \$639.29. This amount multiplied by 200% yields a MAR of \$1,278.58.

- Procedure code 97001, date of service November 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$70.20. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$97.37. The recommended payment is \$97.37.
  - Procedure code J0690, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
  - Procedure code J0690, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
  - Procedure code J2405, date of service November 7, 2008, has a status indicator of K, which denotes nonpass-through drugs and biologicals paid under OPPS with separate APC payment. These services are classified under APC 0768, which, per OPSS Addendum A, has a payment rate of \$0.26. This amount multiplied by 60% yields an unadjusted labor-related amount of \$0.16. This amount multiplied by the annual wage index for this facility of 0.989 yields an adjusted labor-related amount of \$0.16. The non-labor related portion is 40% of the APC rate or \$0.10. The sum of the labor and non-labor related amounts is \$0.26 multiplied by 4 units is \$1.04. Per 42 Code of Federal Regulations §419.43(f) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, drugs, biologicals, and items and services paid at charges adjusted to cost are not eligible for outlier payments. The total APC payment for this line is \$1.04. This amount multiplied by 200% yields a MAR of \$2.08.
  - Procedure code J3010, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
  - Procedure code G0378, date of service November 7, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
4. The total allowable reimbursement for the services in dispute is \$10,341.01. This amount less the amount previously paid by the insurance carrier of \$2,930.56 leaves an amount due to the requestor of \$7,410.45. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$7,410.45.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$7,410.45, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

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Signature

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Medical Fee Dispute Resolution Officer

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March 18, 2013  
Date

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Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Manager

\_\_\_\_\_  
March 18, 2013  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**